



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF FREDERICKSBURG
FOR
FREDERICKSBURG WASTE WATER TREATMENT PLANT
VPDES Permit No. VA0025127**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the City of Fredericksburg, regarding the Fredericksburg Waste Water Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "DMR" means Discharge Monitoring Report.
5. "Facility" or "Plant" means the Fredericksburg Waste Water Treatment Plant located at 700 Beulah-Salisbury Road, Fredericksburg, Virginia, a plant which treats and discharges

treated sewage and other municipal wastes, for the residents and businesses located in the City of Fredericksburg.

6. "Fredericksburg" or "City" means the City of Fredericksburg, a political subdivision of the Commonwealth of Virginia. The City of Fredericksburg is a "person" within the meaning of Va. Code § 62.1-44.3.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "O&M" means operations and maintenance.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPDES Permit No. VA0025127, which was effective on October 18, 2007, modified on August 11, 2009 and expires on October 17, 2012.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water...
9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
14. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. "TKN" means Total Kjeldahl Nitrogen.

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.
21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Fredericksburg owns and operates the Plant in Fredericksburg, Virginia. The Permit authorizes Fredericksburg to discharge treated sewage and other municipal wastes from the Plant, to the Rappahannock River, in strict compliance with the terms and conditions of the Permit.
2. The Plant discharges to the tidal segment of the Rappahannock River. This segment is listed in DEQ's 305(b)/303(d) Integrated Report as impaired for recreational use, due to *E. coli* bacteria and as impaired for fish consumption, due to PCBs in fish tissue. The source of the impairment is unknown. The Rappahannock is also impaired for use by aquatic life due to low dissolved oxygen. The source of the impairment is listed variously as agriculture, municipal point sources, industrial discharges, sanitary sewer overflows, loss of habitat, and atmospheric deposition of Nitrogen, and there is no evidence that discharges from the Plant are contributing to the above-described impairments.
3. In submitting its DMRs, Fredericksburg has indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN for the May 2010, June 2010, and July 2010 monitoring periods. The Permit exceedances reported in the DMRs are as follows:
 - a. During the May 2010 monitoring period, Fredericksburg exceeded the monthly concentration average limit and weekly concentration average maximum limit for TKN and exceeded the monthly loading average limit and weekly loading average maximum limit for TKN.
 - b. During the June 2010 monitoring period, Fredericksburg exceeded the monthly concentration average limit and weekly concentration average maximum limit for TKN and exceeded the monthly loading average limit and weekly loading average maximum limit for TKN.

- c. During the July 2010 monitoring period, Fredericksburg exceeded the monthly concentration average limit and weekly concentration average maximum limit for TKN.
4. DEQ issued a Notice of Violation, NOV No. W2010-07-N-0004 dated July 16, 2010, for the reported permit limit exceedances during the May 2010 monitoring period.
5. In a letter dated July 26, 2010, Fredericksburg responded to the July 16, 2010, NOV. The response stated that the TKN exceedances were a result of equipment issues and weather. Fredericksburg attempted, and was unable to replace the drive shaft in the oxidation ditch in a timely manner due to a manufacturer's part supply problems, and this combined with continuous high flows resulting from unusually severe winter weather, caused the nitrification process to be compromised.
6. DEQ issued a Notice of Violation, NOV No. W2010-08-N-0005 dated September 8, 2010, for the reported permit limit exceedances during the June 2010 monitoring period.
7. DEQ issued a Notice of Violation, NOV No. W2010-09-N-0004 dated September 9, 2010, for the reported permit limit exceedances during the July 2010 monitoring period.
8. On October 6, 2010, Fredericksburg representatives met with DEQ to discuss the NOV's.
9. As of May 2011, Fredericksburg will have completed significant infiltration and inflow reduction work in the downtown area to address hydrologic issues within the collection system connected to the Plant.
10. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
11. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
13. The Department has issued no individual VPDES permits or certificates to Fredericksburg other than coverage under VPDES Permit No. VA0025127.
14. The Rappahannock River is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
15. Based on the DMRs, the Board concludes that Fredericksburg has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the City of Fredericksburg, and the City of Fredericksburg agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,153.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The City of Fredericksburg shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the City of Fredericksburg for good cause shown by the City of Fredericksburg, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the City of Fredericksburg admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. The City of Fredericksburg consents to venue in the Circuit Court of the City of Fredericksburg for any civil action taken to enforce the terms of this Order.

5. The City of Fredericksburg declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the City of Fredericksburg to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The City of Fredericksburg shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The City of Fredericksburg shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City of Fredericksburg shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the City of Fredericksburg intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and the City of Fredericksburg. Nevertheless, the City of Fredericksburg agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The City of Fredericksburg petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the City of Fredericksburg.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City of Fredericksburg from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the City of Fredericksburg and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the City of Fredericksburg certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the City of Fredericksburg to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City of Fredericksburg.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the City of Fredericksburg voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of August, 2011.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

City of Fredericksburg voluntarily agrees to the issuance of this Order.

Date: 04.19.11 By: [Signature], _____
(Person) (Title)
City of Fredericksburg

Commonwealth of Virginia

City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this 19th day of April, 2011, by Beverly R. Emerson who is City manager of City of Fredericksburg on behalf of the City.

[Signature]
Notary Public

200156
Registration No.

My commission expires: Aug 31, 2014

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

City of Fredericksburg shall:

1. Within 30 days of execution of this Order, submit to DEQ the Facility's spare parts inventory as set forth in the Facility's O&M Manual for the maintenance of the oxidation ditch, including a set of specialized pillow block bearings compatible with the oxidation ditch drive shaft.
2. Within 30 days of execution of this Order, submit to DEQ for review and comment, a revised Fats, Oils and Grease (FOG) Plan which reflects the existing operations within the Publically Owned Treatment Works (POTW) as defined under 9 VAC 25-31-10.

Unless otherwise specified in this Order, City of Fredericksburg shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Attn: Enforcement Staff
13901 Crown Court
Woodbridge, VA 22193